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Kiddushin Daf 39

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Prohibitions Outside of the Land***

The sharp scholars from Pumbedisa said: There is no *orlah* prohibition outside of *Eretz Yisroel*.

Rav Yehudah sent this ruling to Rabbi Yochanan. Rabbi Yochanan replied: The *halachah* that doubtful *orlah* is permitted outside *Eretz Yisroel* should be kept quiet (*for otherwise, people will ignore the prohibition completely*) and definite *orlah* should be destroyed (*and it should not be given to people to eat as uncertain orlah*), and announce publicly that their fruits (those who are lenient regarding *orlah*) should be hidden away. And whoever says that *orlah* does not apply outside *Eretz Yisroel* should not merit having a child or grandchild that has a part in Hashem’s congregation.

The *Gemora* asks: So who did the sharp scholars from Pumbedisa hold like?

They went according to the following *braisa*: It was said in the name of Rabbi Eliezer the Great that there is no *halachah* of *orlah* outside of *Eretz Yisroel*.

The *Gemora* asks: But we learned in our *Mishna* that Rabbi Eliezer said, “even *chadash*” (*which implies that he agrees to the Tanna Kamma that there is a prohibition of orlah outside of Eretz Yisroel!*)?

The *Gemora* answers: The *Mishna* should be emended to read that Rabbi Eliezer said, “*chadash*” (*and he disagreed regarding orlah*).

Rabbi Assi said in the name of Rabbi Yochanan: *Orlah* is forbidden outside of *Eretz Yisroel* because of a *halachah* *l’Moshe mi’Sinai*.

Rabbi Zeira asked Rabbi Assi: But we learned in a *braisa* that uncertain *orlah* in *Eretz Yisroel* is forbidden, but in Syria, it is permitted!?

He was stumped for a moment and then he replied: The *halachah* *l’Moshe mi’Sinai* said that uncertain *orlah* outside of *Eretz Yisroel* is permitted, but if it is definite *orlah*, it is prohibited.

Rabbi Assi said in the name of Rabbi Yochanan: One incurs Biblical lashes for transgressing the prohibition of *kilayim* (*outside of Eretz Yisroel*).

The *Gemora* asks: But the *Mishna* states that *kilayim* (*outside of Eretz Yisroel*) is only Rabbinically forbidden?

The *Gemora* answers: The *Mishna* is referring to *kilayim* of the vineyard (*which outside of Eretz Yisroel is only Rabbinically forbidden*), while Rabbi Yochanan is discussing the grafting of trees (*which is Biblically forbidden outside of Eretz Yisroel*). This is in accordance with Shmuel who explains two seemingly contradictory verses in this manner.

The *Gemora* records an incident: Rav Chanan and Rav Anan were walking on the road and they saw a person planting different seeds together. Rav Anan said to Rav Chanan: Let us excommunicate him (*for he held that planting kilayim seeds outside of Eretz Yisroel is Rabbinically forbidden*). Rav Chanan replied: It seems that the *halachah* is unclear to you

(for there is no prohibition to plant kilayim seeds outside of Eretz Yisroel).

They then saw another man planting wheat and barley among some vines. Rav Anan said to Rav Chanan: Let us excommunicate him (for he held that planting kilayim seeds outside of Eretz Yisroel is Rabbinically forbidden). Rav Chanan replied: It seems that you are not informed in the halachos of kilayim, for although it is forbidden to plant this type of kilayim outside of Eretz Yisroel, do we not hold like Rabbi Yoshiya who rules that the prohibition is not violated unless one plants wheat, barley and grape seed simultaneously (and not by planting wheat and barley next to existing vines)?

Rav Yosef once planted two different types of seeds in a field. Abaye asked him: But the Mishna states that kilayim outside of Eretz Yisroel is Rabbinically forbidden?

Rav Yosef answered: The Mishna is referring to kilayim of the vineyard (which outside of Eretz Yisroel is Rabbinically forbidden), while I was planting seeds (which is not forbidden at all outside of Eretz Yisroel).

Rav Yosef explains: Kilayim of the vineyard, which in Eretz Yisroel is Biblically forbidden to derive any benefit from, the Rabbis decreed regarding it outside of Eretz Yisroel. However, kilayim seeds, which are not forbidden to derive benefit from even in Eretz Yisroel, the Rabbis did not decree regarding it outside of Eretz Yisroel.

Rav Yosef later retracted from this opinion (that it is permitted to plant kilayim seeds outside of Eretz Yisroel): He said: It is not correct that which I said, for Rav planted vegetables for his students in different areas. He must have done that to avoid violating the prohibition of kilayim.

Abaye disagreed with his proof: If Rav would have planted four different seeds on four corners of the field and one in the middle, it would have been a valid proof. But what Rav did could have been because it is nicer looking this way, or

because it would be easier for the attendant to gather the vegetables when they were planted in an orderly fashion. (39a – 39b)

### Mishna

Whoever performs one mitzvah is rewarded with good, his life is lengthened and he inherits the world. And whoever does not perform one mitzvah is not rewarded with good, his life is not lengthened and he does not inherit the world. (39b)

### Rewards for a Mitzvah

The Gemora cites a Mishna which seems to contradict this one: The following matters allow one to enjoy their fruits in this world and the principle remains for him to enjoy in the World to Come. These matters are: honoring one's father and mother, acts of kindness, receiving visitors, facilitating peace between his fellow men, and the study of Torah is equivalent to all those mentioned. [Our Mishna seems to say that this is true regarding any mitzvah!]

Rav Yehudah answers: Our Mishna means that if he performs one mitzvah in addition to his other merits (so that now he has more merits than sins), he will be rewarded with good and he is similar to one who has fulfilled the entire Torah.

The Gemora asks: Does that mean that if he performs just one of the mitzvos mentioned in the other Mishna, he will be rewarded like so (how can that be, if most of his deeds are sins)?

Rav Shemaya answered: Rav Yehudah meant to say that if his mitzvos equal his amount of sins, and he has performed one of the mitzvos mentioned in that Mishna, it will tip the balance (and he will be duly rewarded).

The Gemora asks: And is it true that if one performs one mitzvah in addition to his other merits (so that now he has

more merits than sins), he will be rewarded with good? But we learned in a *braisa*: If one has more merits than sins, he will suffer (*in this world in order to receive reward in the World to Come*) and it is similar to one who has burned the entire Torah without leaving out even one of the letters. And if one has more sins than merits, he will be rewarded with good (*in this world in order that he will not receive reward in the World to Come*) and it is similar to one who has fulfilled the entire Torah without missing even one of the letters!?

Abaye answers: When the *Mishna* says that he is rewarded with good, it means that they prepare for him a good day (*by punishing him in this world, thus preparing him for his reward in the World to Come*). And when the *Mishna* says that he suffers, it means that they prepare for him a bad day (*by rewarding him in this world in order that he will suffer in the World to Come*).

Rava answers: The *braisa* is following the opinion of Rabbi Yaakov, who says: There is no reward given in this world for fulfilling a *mitzvah*. For we learned in a *braisa*: Rabbi Yaakov said: There is no *mitzvah* written in the Torah together with their reward that the Resurrection of the dead is not dependent on it.

He brings proof to this from the following: It is written with respect to the *mitzvah* of honoring one's father and mother: *so that your days shall be lengthened and so that it will be good for you*. And by the *mitzvah* of sending away the mother bird it is written: *so that it shall be good for you and you will live long*. But what would be if his father would say to him, "Go up to the tower and bring me some young birds," and he would go up, send away the mother bird and take the chicks, and on his way down the ladder, he would fall and die. Where is the good life he was promised? Where is his long life? Rather, it must be that the verse is referring to the World that is completely good, and the World that is entirely long (*the World to come*).

The *Gemora* asks: But perhaps this story never happened?

The *Gemora* answers: Rabbi Yaakov saw it take place.

The *Gemora* asks: But perhaps the son was thinking about committing a sin?

The *Gemora* answers: The Holy One, Blessed be He, does not consider a bad thought as an action.

The *Gemora* asks: But perhaps he was thinking about committing idolatry (*where a bad thought is regarded as an action*)?

The *Gemora* answers: If there is reward in this world for performing a *mitzvah*, the *mitzvah* should have served as a protection so that he would not have any bad thoughts.

The *Gemora* asks: But Rabbi Elozar laid down a rule that one sent on a mission to perform a *mitzvah* will not be harmed.

The *Gemora* answers: He may be harmed when he is returning from the *mitzvah*.

The *Gemora* asks: But Rabbi Elozar specifically states that he will not be harmed on the way back as well?

The *Gemora* answers: It was a rickety ladder, and where a danger is likely to happen, one cannot rely on a miracle to protect him.

Rav Yosef said: If Acher (*Elisha ben Avuyah, Rabbi Meir's teacher, who rebelled against the Torah*) had interpreted the verse in the same manner as Rabbi Yaakov, the son of his daughter, did, he would never have sinned.

The *Gemora* asks: What happened with Acher?

Some say that he saw an incident similar to that of Rabbi Yaakov (*and he concluded that there is no reward for good deeds*). Others say that he saw the tongue of Chutzpis the spokesman (*for Rabban Gamliel*) as it was being dragged by "another thing" (*a pig; after the Romans ripped it out*). Acher

said: Should the mouth that emitted pearls of wisdom lick the dust? He went out and sinned.

Rav Tuvi the son of Rav Kisna asked Rava: Our *Mishna* said: Whoever performs one *mitzvah* is rewarded with good. We can infer that this is only if he actually performed the *mitzvah*. But we learned in a *braisa*: If one sits and does not sin, they reward him as if he has performed a *mitzvah*!?

Rava answers: The *braisa* is dealing with a case where a person had the opportunity to sin, but he held himself back, as what happened with Rabbi Chanina bar Pappi: A noblewoman wished to act immorally with him. He said something (*the Holy Name*) and he developed boils and scabs all over his body. She used witchcraft and cured him. He ran to a bathhouse that was so infested with demons that even if two people would enter it, and even if it was during the day, they would be harmed by the demons. The next day, the other Rabbis asked him, “Who protected you?” He replied, “Two of the Caesar’s soldiers watched over me the entire night.” They asked him, “Perhaps you once overcame a desire to act immorally, for we learned in a *braisa*: If a person had the opportunity to act immorally, but he held himself back, they perform a miracle for him.”

It is written: *Strong warriors who do His bidding to heed the voice of His word.* This is referring to Rabbi Tzadok and those like him. A (*powerful*) noblewoman wished to entice Rabbi Tzadok to commit an immoral act with her. He said, “I am feeling too weak to do it. Is there something to eat here?” She said, “There is some non-kosher meat.” Rabbi Tzadok said, “What can be derived from this? It is fitting for the one who acts immorally with a gentile woman to be fed non-kosher meat.” She then lit the oven to cook the meat. Rabbi Tzadok then climbed into the oven (*since if he would not agree to act immorally with her, she would have him killed*). The woman exclaimed, “What are you doing?” Rabbi Tzadok told her that the one who commits this immoral act deserves to fall into the fire (*of Gehinom*). She said, “If I would have realized how severe you

considered this a sin, I would not have bothered you in the first place.”

A similar incident happened with Rabbi Kahana. He was selling baskets and a noblewoman wished to entice him to commit an immoral act with her. He threw himself off a roof to avoid her. The prophet Eliyahu came and caught him. Eliyahu said to him, “You troubled us to travel four hundred parsos to come and save you!” Rav Kahana replied, “If I would not have been poor, this would not have happened (*for I wouldn’t be compelled to be next to women*).” Eliyahu gave him a chest filled with *dinars*. (39b – 40a)

## INSIGHTS TO THE DAF

### Mitzvah of *Shilu’ach Hakan* on Shabbos

Our *daf* cites R. Yaakov who says that the Torah’s promise of reward for the mitzvah of *shilu’ach hakan* [sending the mother bird away from the nest]—“You shall surely send away the mother and take the young for yourself, **so that it will be good for you and will prolong your days**” (Devorim 22:7)—refers to reward in the World-to-Come and not in this world. There are a number of disputes among the *poskim* over the details of this mitzvah throughout the various stages of its performance.

Much can be learned from a question posed to the Chasam Sofer, asking whether the mitzvah should be performed if one encounters a nest of birds on Shabbos (*Responsa Chasam Sofer, Orach Chaim §100*). [It is clear that he cannot take the eggs or the baby birds on Shabbos, for they are *muktsa*. However he could fulfill the mitzvah of sending the mother bird away since this in itself is a mitzvah (Chacham Tzvi).]

**When are we obligated in this mitzvah?** The Chavas Ya’ir is undecided whether anyone who encounters a bird’s nest is obligated to send the mother bird away, or whether the mitzvah only applies when the person who comes across the nest wants to take the eggs or the young for himself

(*Responsa Chavas Ya'ir* §67; see also *Pischei Teshuva*, Yoreh Deah 292:1).

**How should the mother bird be sent away?** The Rambam (Hilchos Shechitah 13:5) writes that one must hold the mother bird's wings and drive it out of the nest. According to Rashi (Chulin 141b s.v. *m'shalchei*) it is enough to scare it away from the nest by making a noise. [See *Torah Lishmah* §278 by the author of the *Ben Ish Chai* who writes that even according to the Rambam, holding the bird and driving it away is only *lechatchilah*. According to the Chasam Sofer, however, this is considered an essential part of the mitzvah.]

**The reason for the mitzvah:** The Ramban (Devarim 22:6, citing *Moreh Nevuchim*) and the Chinuch (Mitzvah 545) explain that *HaKadosh Baruch Hu* has pity for every living creature. He commanded us to send the mother bird away from the nest because it suffers great anguish when it sees its young being harmed. From their writings it is clear that the mitzvah of *shilu'ach hakan* only applies when someone wants to take the baby birds for himself.

However, the Chasam Sofer cites the Zohar, which says the mitzvah of *shilu'ach hakan* should be performed any time one comes across a bird's nest. When we send the mother bird away, says the holy Zohar, she flies around crying pitifully, looking for her young. This arouses an outcry in Heaven, and the *Shechinah* starts crying pitifully for Her children, the Jewish Nation. According to the Zohar the mitzvah is not limited to cases where one wants the young. However, the Chasam Sofer, based on a number of sources throughout *Shas*, demonstrates that the **obligation** to perform the mitzvah only applies when someone wants the young birds. In terms of what is written in the Zohar he says whenever there is a difference of opinion "between the *niglah* and the *nistar* [revealed and hidden Torah], it is not our task to delve into concealed knowledge, and we must do what has been revealed to us."

**Now, says the Chasam Sofer**, let us return to the question about *shilu'ach hakan* on Shabbos. A) According to the "revealed" reason, there is certainly no **obligation**, since the

young cannot be handled on Shabbos. The question remains whether it is a mitzvah [a meritorious act] to send away the mother bird. B) According to the explanation in the Zohar, surely we should not endeavor to "arouse a pitiful outcry in Heaven" since Shabbos is a day of joy. C) According to the Rambam one must hold the bird's wings before sending her away, which is certainly forbidden on Shabbos since it is considered *tzeidah* [trapping]. In addition, it would involve handling *mutksa* that may not be moved, even for a mitzvah. D) Now all that remains is Rashi's opinion that the bird be sent away by making a noise. Even in this case the Chasam Sofer rules *shilu'ach hakan* should not be done on Shabbos. Sending the mother bird away without holding its wings is not necessarily a mitzvah, since according to the Rambam this does not fulfill the requirements of the mitzvah; driving the mother bird away invariably causes her great sorrow and should only be done when a mitzvah is definitely being fulfilled. Otherwise doing so would be considered "unnecessary cruelty, and our Sages disapprove of someone who does the mitzvah under such circumstances out of a sense of misplaced piety." [On a weekday, when he intends to take the young, he is **obligated** to send the mother away, even if he is uncertain whether the mitzvah of "*shilu'ach*" is being fulfilled since it is forbidden to take the young in the mother's presence.]

#### DAILY MASHAL

**Did you know?** The mitzvah of *shilu'ach hakan* is a *segulah* for the childless. The *Chinuch* (Mitzvah 545), writing in the name of the Medrash (Devarim Rabbah, Ki Tzeitzei, Piska 6), says this is hinted in the *pasuk*, "and take the **young for yourself.**"